RECENT CASES.

APPEAL—SERVING "CASE"—CITY OF GARDEN CITY v. MERCHANTS' AND FARMERS' NATIONAL BANK OF DANSVILLE, N. Y., 60 Fed. (Kan.) 823.—The records of the lower court show that after the judgment had been rendered the court extended the time of the defendant for making and serving a case to the 22d day of March, 1897. On the 22d further extension was made. Defendant claims that the case made was not served within the time fixed by order of the lower court. *Held*, that a time for serving such "case" expired March 21, at midnight, and a case served under an order made March 22 would not be served in time.

In King v. *Stevens & Agnew*, 5 East 244, Lord Ellenborough said "that the words 'to and until' may be either inclusive or exclusive, according to the manifest intention of the persons using them." The cases of *Montgomery* v. *Reed*, 69. Me. 514; *Thomas* v. *Hatch*, 3 Sumn. 178, 179, and *De Haven* v. *De Haven*, 49 Ind. 296, hold that the word "to" is exclusive, while *Gottleib* v. *The Fred. W. Wolf Co.*, 75 Md. 126, a case in many respects parallel to the present case, holds that the word "to" is inclusive. In the cases of *Bellhouse* v. *Miller*, 4 Hurl. & Nor. 120; *Isaac* v. *Royal Ins. Co. L. R.*, 5 Exch. 296, and *Thomas* v. *Douglas*, 2 Johns Cases 225, hold that the word "until," which is synonomous with "to," is inclusive.

ARREST—JUSTIFICATION—FALSE IMPRISONMENT—SNEAD v. BONNOIL, 63 N. Y. Sup. 553.—Officers, suspecting felony, made an arrest without a warrant and found a concealed weapon in possession of the party, for which misdemeanor he was subsequently fined. Failing to get proof of felony, they charged the plaintiff with carrying concealed weapon after he had been in jail 24 hours beyond the time when he was entitled to discharge upon bail, had they made such charge at once. *Held*, false imprisonment. Van Brunt, P. J., and Ingraham, J., dissenting.

As to justification for arrest in that a concealed weapon was found, the majority opinion follows *Murphy* v. *Kron*, 8 N. Y. St. R. 230. "You cannot arrest a man merely because, if all were known, he would be arrestable." Even admitting justification, they held that, owing to the said 24 hours' overtime, the case was within the rule laid down in the *Six Carpenters' Case*. 8 Coke 146, thus deeming the officers trespassers ab initio. The dissenting judges held that the detention was not wholly illegal and that an arrest made by an officer without a warrant for a misdemeanor committed in his presence is not a false imprisonment. 12 *Am. and Eng. Ency.* 726, 740; *Meserve* v. *Folsom*, 20 Atl. 926. They contended also that it was against public policy thus to hamper the police in the exercise of their discretion.

ATTORNEY AND CLIENT—LIEN—WEATHERFORD v. HILL ET AL., 56 S. W. Rep. 448.—Claim for attorney's lien on land assigned as dower. *Held*, where attorney obtains partition of land he acquires no lien for his fees on the part set aside for his client. Bunn, C. J., dissenting.

This ruling is in strict conformity with the decisions contained in *Hershey* v. *Deo. Val.*, 47 Ark. 86; *Gilson* v. *Buckner*, 44 S. W. 1034. Nevertheless, in *Brown* v. *Biddle*, 3 Tenn. Ch. 618; *Wilson* v. *Wright*, 72 Ga. 848, the lien was recognized. It was also extended in England by 23 and 24 Vict., ch. 127 and 128.

BILLS AND NOTES — IRREGULAR INDORSEMENT — CARRINGTON v. ODOM, 27 Sou. Rep. 510 (Ala.).—Where defendant endorsed a promissory note before

delivery. *Held*, he is subjected to only the obligations of an endorsee, unless it is shown by oral evidence (which is held admissible) that he executed it as maker.

The authorities are hopelessly at variance on the question of anomalous indorsements; some courts holding such an endorser a joint promisor or surety, *McGuire* v. *Bosworth*, 1 La Ann 248. Pennsylvania regarding liens as a guarantor. *Schollenberger* v. *Nelif*, 28 Pa. St. 189. The Connecticut court holds in *Perkins* v. *Catlin*, 11 Conn. 213, that the nature of the indorsement is to be proved by oral evidence, while in *Wright* v. *Morse*, 9 Gray 337, the presumption that he intended to be an original promisor seems to be conclusive. The difficulty of carrying out the intention of the parties and at the same time preserving the certainty and exactness of commercial instruments, possibly accounts for the conflict among the courts.

CONSTITUTIONAL LAW—BANKRUPTCY—ALIMONY—BARCLAY V. BARCLAY, 56 N. E. 636.—Plaintiff in error brings record to the Supreme Court claiming that proceedings, resulting in a decree of alimony, should have been stayed in Circuit Court until adjudication on a bankruptcy petition, and also claiming that Section 12 of Article II of the Constitution: "No person shall be imprisoned for debt, etc.," has been violated. *Held*, that there was no error committed by the Circuit Court.

The question as to whether alimony is a "debt" within the meaning of a statute providing for relief from such debts by a discharge in bankruptcy, seems to be undecided. A decree for alimony and costs is a provable debt under Bankrupt Act of 1898. *In re Van Orden*, 96 Fed. 86. Alimony is not a debt. *Noyes* v. *Hubbard*, 15 L. R. A. 394. Nor is it a "debt" within the constitutional inhibition of imprisonment for debt, and the defendant may be held to answer for contempt in default of payment. *Pain* v. *Pain*, 80 N. Car. 322; *Chase* v. *Ingalls*, 97 Mass. 524. Failure to pay alimony as directed by order of court is no ground for imprisonment. *Wightman* v. *Wightman*, 45 Ill. 167; *Steller* v. *Steller*, 25 Mich. 159.

CONSTITUTIONAL LAW—DENTISTRY—EXAMINATIONS—KNOWLES V. STATE, 45 Atlan. 877 (Md.).—By a legislative act all persons wishing to practice dentistry in Maryland were required to pass an examination given by a State board of examiners. By a clause in the act the board was allowed to waive the examination at its discretion. *Held*, that such an act was constitutional.

As to the constitutional right of a State to require examinations of this kind there can be no doubt. *Dent* v. *W. Va.*, 129 N. S. 114; *Singer* v. *State*, 72 Ind. 464. The point of controversy in the case was whether the right to waive the examination by the board was not conferring upon it unreasonable and arbitrary power, thus making it come under the decision as laid down in *Yick Wo* v. *Hopkins*, 118 U. S. 356. The court reached its decision on the idea that the spirit and principle upon which the act was passed precluded any limit of purely personal and arbitrary power. *Williams* v. *State Board*, 93 Penn. 619; *State* v. *Creditor*, 44 Kan. 568.

CORPORATIONS—PROMOTERS—ATTORNEY AND CLIENT—FREEMAN IMP. CO. V. OSBORN, 60 Pac. Rep. 730 (Colo.).—Where an attorney rendered services to the promoter of a corporation, drawing articles of association, by-laws, etc. *Held*, the charge is an indebtedness of the corporation when it comes into existence. *Bell's Gas Co.* v. *Christie*, 79 Pa. St. 54; *Law* v. *Connecticut, etc., Ry. Co.*, 45 N. H. 370. Contra, *Gent* v. *Manufacturer's Ins. Co.*, 107 Ill. 652.

CORPORATE STOCK—DAMAGES—EVIDENCE—MARKET QUOTATIONS—SALES—WILDES ET AL. V. ROBINSON, 63 N. Y. Sup. 811 (App. Div.).—In an action to recover damages for failure to deliver stock according to contract, evidence as to market quotations on said stock at a certain time was admitted to show its value. *Held*, inadmissible unless based on actual sales. New trial ordered. O'Brien and Ingrahm, J. J., dissenting.